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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,751	06/04/2001	Kenneth M. Phillips	6807.US.O1	4856

25755 7590 06/17/2004

ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES  
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EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT PAPER NUMBER

1623

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/873,751

Applicant(s)

PHILLIPS ET AL.

Examiner

Traviss C McIntosh

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

The Amendment filed March 15, 2004 has been received, entered into the record, and carefully considered. The following information provided in the amendment affects the instant application by:

Claims 1, 9-11, 14, and 15 have been amended.

Claims 16-20 have been canceled.

Claim 23 has been added.

Remarks drawn to rejections of Office Action mailed December 2, 2004 include:

103(a) rejection which has been withdrawn due to applicant's amendments.

An action on the merits of claims 1-15 and 23 is contained herein below. The text of those sections of Title 35, US Code which are not included in this action can be found in a prior Office action.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 15, 2004 has been entered.

***Claim Rejections - 35 USC § 112***

Claims 1-15 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 is indefinite wherein the claim is drawn to a method of providing a “good tasting” aqueous solution. However, it is unclear as to what is meant by good tasting, as various people have various tastes, i.e., some people think that liver tastes good, and other do not think liver tastes good.

Claim 11 is indefinite wherein the claim lists the compounds “zinc sulfonate and zinc acetate” two times in the Markush group, and it is unclear why these compounds were listed twice.

All claims which depend from an indefinite claim are also indefinite. *Ex parte Cordova, 10 U.S.P.Q. 2d 1949, 1952 (P.T.O. Bd. App. 1989).*

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-7, 9-14, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamarei (US Patent 5,985,339).

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Independent claim 23 is drawn to a method of providing a good tasting aqueous solution comprising administering to a human an aqueous solution comprising zinc and citrate in various amounts. Claim 1 adds additional ingredients sodium, potassium, and carbohydrates and claim 2 adds chloride. Claims 4, 5, 7, 9, 10, 12, and 14 provide various amounts of the ingredients. Claims 6, 11, and 13 provide various forms of sodium, zinc, and chloride which are to be used in the method.

Kamarei disclose orally administered aqueous compositions comprising sucrose, calcium citrate, sodium chloride, zinc sulfate, potassium phosphates, and potassium iodide, wherein the compositions are disclosed as ready-to-drink compositions (see tables). Kamarei disclose that their compositions meet the requirements for human use (see claims 11, 17, and 25). Kamarei's disclosure of compositions as ready-to-drink compositions indicates that they intend the compositions to be "good tasting", column 6, lines 6-11 states that the "undesirable off-taste of vitamins are less pronounced", which indicates that the composition of Kamarei is developed to be "good tasting". As such, Kamarei disclose compositions comprising the various forms of citrate, zinc, sodium, potassium, and carbohydrates, and methods of administering to humans, which would inherently provide a method of providing a good tasting aqueous composition to a human, as the same composition is administered to the same population. Additionally, it is noted that the dosages of the prior art and the instant application compounds in the compositions are seen to be correlative. Since the Office does not have the facilities for preparing the claimed compositions and comparing them with prior art inventions, the burden is on Applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. See

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*In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 619 F.2d 67, 205 USPQ 594 (CCPA 1980).*

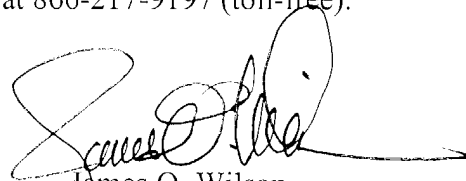
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C McIntosh whose telephone number is 571-272-0657. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Traviss C. McIntosh III  
June 10, 2004



James O. Wilson  
Supervisory Patent Examiner  
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